

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 16, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CURTIS LOBDELL, husband, and the
marital community comprised thereof,
DANIELLE LOBDELL, wife, and the
marital community comprised thereof,

Plaintiffs,

v.

COUNTY OF SPOKANE, CITY OF
AIRWAY HEIGHTS, OZZIE
KNEZOVICH, Spokane County
Sheriff, DEPUTY GIACOMINI,
Spokane County Sheriff Deputy,
DEPUTY GUNTER, Spokane County
Sheriff Deputy, BRAD RICHMOND,
Airway Heights Police Chief,
PATRICK CARBAUGH, Airway
Heights Officer, ROBERT SWAN,
Airway Heights Officer, OFFICER
LANGAN, Airway Heights Officer,
OFFICER FLAVEL, Airway Heights
Officer, BRIAN NEWMAN, Airway
Heights Officer,

Defendants.

No. 2:22-CV-00020-MKD

ORDER GRANTING MOTIONS TO
DISMISS WITHOUT LEAVE TO
AMEND

ECF Nos. 7, 8

1 Before the Court are Defendants City of Airway Heights (“Airway
2 Heights”), Airway Heights Police Chief Brad Richmond (“Chief Richmond”),
3 Airway Heights Officers Patrick Carbaugh, Robert Swan, Brian Newman, Langan,
4 and Flavel’s¹ (collectively the “Airway Heights Defendants”) Motion to Dismiss
5 Under 12(b)(6), ECF No. 7, and Defendants Spokane County, Spokane County
6 Sheriff Ozzie Knezovich (“Sheriff Knezovich”), and Spokane County Sheriff’s
7 Deputies Chris Giacomini and Chris Gunter’s (collectively the “Spokane County
8 Defendants”) Motion to Dismiss, ECF No. 8.

9 Plaintiffs bring various causes of action against local municipalities and law
10 enforcement officers arising out of an allegedly unlawful search of Plaintiffs’
11 home. Plaintiffs’ Complaint, ECF No. 1, is difficult to discern, and the Court
12 construes the claims therein as follows. Plaintiffs allege causes of action arising
13 under 42 U.S.C. § 1983 for deprivations of rights protected by the Fourth, Fifth,
14 Eighth, and Fourteenth Amendments to the United States Constitution. ECF No. 1
15 at 3 ¶ 2.1. Plaintiffs allege that Spokane County, Sheriff Knezovich, Airway
16 Heights, and Chief Richmond (collectively “the supervisory defendants”) failed to
17 adequately train and supervise their employees, who violated their rights, or

18
19 ¹ Officers Langan and Flavel are identified by their last names only. ECF No. 1 at
20 3-4 ¶ 2.9.

1 otherwise failed to adopt policies to prevent such violations. ECF No. 1 at 10-11,
2 12 ¶¶ 4.46-4.53, 5.49. Plaintiffs allege that the supervisory defendants, by custom,
3 policy, or practice, caused constitutional injuries. ECF No. 1 at 13 ¶ 6.48; *see also*
4 ECF No. 1 at 16-17 ¶¶ 8.46-8.52.

5 Plaintiffs allege that Officers Carbaugh, Swan, Langan, Flavel, and
6 Newman, and Deputies Gunter and Giacomini, along with various unnamed
7 defendants, acted either purposefully or with negligent and reckless disregard, to
8 violate their Fourth and Fourteenth Amendment Rights. ECF No. 1 at 12 ¶¶ 5.47-
9 5.48. Further, Plaintiffs allege that Officer Carbaugh and Deputies Gunter and
10 Giacomini violated their Fourth, Fifth, and Fourteenth Amendments rights through
11 unlawful interrogation and search and seizure. ECF No. 1 at 14 ¶¶ 6.51-6.53.

12 Plaintiffs allege violations of the Washington State Constitution, Article 1,
13 Section 7. ECF No. 1 at 15 ¶¶ 7.46-7.48.

14 Plaintiff Curtis Lobdell alleges Malicious Prosecution by Spokane County,
15 Deputies Gunter and Giacomini, Airway Heights, and Officers Carbaugh, Swan,
16 Langan, Flavel, and Newman. ECF No. 1 at 17-18 ¶¶ 9.46-9.47.

17 In each of the pending Motions, Defendants seeks dismissal of all claims
18 under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be
19 granted. For the following reasons, the Court **GRANTS** Defendants' Motions and
20 dismisses Plaintiffs' Complaint without leave to amend.

FACTUAL BACKGROUND

A. Facts as Alleged in the Complaint

When considering a motion made under Fed. R. Civ. P. 12(b)(6), the Court accepts the facts alleged in the Complaint as true. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). The following recitation is derived solely from Plaintiffs' Complaint.

On or about February 24, 2020, Officer Carbaugh responded to a call at Plaintiffs' residence. ECF No. 1 at 4 ¶ 3.1. Dispatch advised that Plaintiffs had an argument, Mr. Lobdell was intoxicated and displaying a gun, and Ms. Lobdell left the house while her two children remained home. ECF No. 1 at 4 ¶ 3.2. Officer Carbaugh arrived, ordered Mr. Lobdell to exit the house, and Mr. Lobdell was handcuffed and placed in the back seat of a patrol car. ECF No. 1 at 4-5 ¶¶ 3.3-3.7. Officer Carbaugh inquired "where the gun was[,]" and Mr. Lobdell denied having a gun or that there was one in the home. ECF No. 1 at 4-5 ¶ 3.8.

Deputies Giacomini and Gunter, and Officers Carbaugh, Swan, Flavel, Langan, and Newman entered Plaintiffs' home to perform a protective sweep of the premises and to check the welfare of the children. ECF No. 5-6 at ¶¶ 3.12-3.13. After the sweep, Ms. Lobdell reentered her home and spoke with Officer Carbaugh. ECF No. 1 at 6 ¶¶ 3.14-3.15.

1 Ms. Lobdell relayed the following to Officer Carbaugh: When Ms. Lobdell
2 returned home from work, Mr. Lobdell was intoxicated and an empty bottle of
3 whiskey was on the kitchen counter. ECF No. 1 at 6 ¶ 3.17. Mr. Lobdell
4 confronted Ms. Lobdell and followed her around the home asking questions and
5 made threatening gestures. ECF No. 1 at 6 ¶ 3.18. Ms. Lobdell told Mr. Lobdell
6 to leave her alone and retreated to the children's bedroom to avoid him. ECF No.
7 1 at 6-7 ¶ 3.19-3.20. Mr. Lobdell entered the bedroom, stood over her, and
8 grabbed her wrists. ECF No. 1 at 7 ¶ 3.20-3.21. Mr. Lobdell left the bedroom,
9 went to the master bedroom, and Ms. Lobdell thought she heard the loading or
10 cocking of a gun. ECF No. 1 at 7 ¶ 3.22. Ms. Lobdell went to the master bedroom
11 and found Mr. Lobdell standing with his hands behind his back and an empty gun
12 case on the bed. ECF No. 1 at 7 ¶ 3.23. Ms. Lobdell attempted to leave, but
13 Mr. Lobdell, hands still behind his back, blocked her way. ECF No. 1 at 7 ¶¶ 3.24-
14 3.25. Ms. Lobdell shoved her way though, left the home, and called the police.
15 ECF No. 1 at 7 ¶ 3.26.

16 Officer Carbaugh asked Ms. Lobdell where the gun was located and
17 Ms. Lobdell took him to the bedroom, but no gun was found. ECF No. 1 at 7-8 ¶¶
18 3.28-3.29. Officer Carbaugh returned to his patrol car, read Mr. Lobdell his rights,
19 and Mr. Lobdell refused to speak with the officers. ECF No. 1 at 8 ¶ 3.30. Officer
20

1 Carbaugh then went back into the home, spoke with Ms. Lobdell, and her children
2 corroborated her account of events. ECF No. 1 at 8 ¶ 3.32.

3 Officer Carbaugh requested that Deputies Giacomini and Gunter and
4 Officers Swan, Langan, Flavel, and Newman, and unnamed other officers, conduct
5 a search of the home for a loaded firearm. ECF No. 1 at 8 ¶ 3.35. Officer
6 Carbaugh again returned to the patrol car, asked Mr. Lobdell about the gun, and
7 Mr. Lobdell again denied owning or having a firearm. ECF No. 1 at 9 ¶¶ 3.37-
8 3.38.

9 Deputy Giacomini advised Officer Carbaugh that the officers found the gun
10 in the master bedroom. ECF No. 1 at 9 ¶ 3.39. The officers located an unloaded
11 Astra 9mm pistol, 9mm ammo and magazines, .380 ammo and magazines, and
12 .270 rifle ammo and magazines in an unlocked gun case under the bed. ECF No. 1
13 at 9 ¶¶ 3.40-3.41.

14 Officer Langan advised Officer Carbaugh that Mr. Lobdell was a convicted
15 felon, and Officer Carbaugh arrested Mr. Lobdell for Felony Harassment Threats
16 to Kill DV and Unlawful Possession of a Firearm First Degree. ECF No. 1 at 9 ¶
17 3.43. Mr. Lobdell was charged with Assault Second Degree with a Deadly
18 Firearm and Unlawful Possession of a Firearm First Degree. ECF No. 1 at 9 ¶
19 3.44. Mr. Lobdell pled guilty to one count of gross misdemeanor harassment, DV,
20 and the remaining charges were dismissed. ECF No. 1 at 9 ¶ 3.45.

B. Body Camera Footage

Plaintiffs submitted Officer Carbaugh's body camera footage from the night of February 24, 2020 with their Response in Opposition to the Spokane County Defendants' Motion to Dismiss, ECF No. 10. ECF No. 11, Ex. A. The body camera footage is explicitly referenced in Plaintiffs' Complaint. ECF No. 1 at 8 ¶ 3.36 ("In body cam videos [Officer Carbaugh] and Deputy Giacomini can be heard discussing that the search was a violation of the Plaintiff's rights but decided they will go forward with the search in violation of the Plaintiff's rights."). Plaintiffs rely upon the body camera footage in their response to Spokane County's Motion to Dismiss. ECF No. 10 at 12. Although it is not cited, Plaintiffs clearly rely upon the same body camera footage in their response to Airway Heights Defendants' Motion to Dismiss as well. ECF No. 9 at 8-9 (quoting the video), 10 (citing to a specific time in the video and events depicted therein).

The parties have not briefed the issue, but the Court must decide whether it may consider the body camera footage. Ordinarily, when ruling on a Fed. R. Civ. P. 12(b)(6) motion, if a district court considers evidence outside of the pleadings, it must convert the motion into a Fed. R. Civ. P. 56 motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). However, a court may consider certain materials without converting the motion. *Id.*

1 The doctrine of incorporation by reference is meant to prevent plaintiffs
2 “from selecting only portions of documents that support their claims, while
3 omitting portions of those very documents that weaken—or doom—their claims.”
4 *C.B. v. Moreno Valley Unified Sch. Dist.*, 544 F. Supp. 3d 973, 988-89 (C.D. Cal.
5 2021) (quotations omitted) (citing *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d
6 988, 1002 (9th Cir. 2018)). “Defendants may incorporate a document if the
7 plaintiff refers extensively to the document or the document forms the basis of the
8 plaintiff’s claim.” *Id.* (quotations omitted). The doctrine extends to documents
9 necessarily relied upon in a complaint or where the contents of the document are
10 alleged in a complaint, and the document’s authenticity and relevancy are not
11 disputed. *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010).
12 District courts have incorporated police body camera footage into a complaint for
13 consideration of a Fed. R. Civ. P. 12(b)(6) motion when appropriate. *See, e.g.*,
14 *Raudelunas v. City of Vallejo*, No. 2:21-cv-00394-KJM-JDP, 2022 WL 329200, at
15 *1 (E.D. Cal. Feb. 3, 2022); *C.B.*, 544 F. Supp. 3d at 988-89; *Saved Magazine v.*
16 *Spokane Police Dep’t*, 505 F. Supp. 3d 1095, 1103 (E.D. Wash. 2020), *aff’d*, 19
17 F.4th 1193 (9th Cir. 2021), *cert. denied* 142 S. Ct. 2711 (2022).

18 Here, the body camera footage is referenced in Plaintiffs’ Complaint,
19 Plaintiffs offer it in support of the factual allegations therein, and no party disputes
20 its authenticity or relevance. The bulk of Plaintiffs’ factual allegations concern the

1 events depicted in the body camera footage. The Court shall consider the body
2 camera footage in ruling on the instant motions.

3 **LEGAL STANDARD**

4 Fed. R. Civ. P. 8(a)(2) provides that “[a] pleading that states a claim for
5 relief must contain . . . a short and plain statement of the claim showing that the
6 pleader is entitled to relief[.]” A motion to dismiss under Fed. R. Civ. P. 12(b)(6)
7 tests the legal sufficiency of the claims in the complaint. *Navarro v. Block*, 250
8 F.3d 729, 732 (9th Cir. 2001). To avoid dismissal, a complaint must contain
9 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
10 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*
11 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

12 A court reviewing a Fed. R. Civ. P. 12(b)(6) motion must presume all facts
13 alleged in the complaint as true and draw all reasonable inferences in the plaintiff’s
14 favor. *Barker v. Riverside Cnty. Office of Educ.*, 584 F.3d 821, 824 (9th Cir.
15 2009). However, a court need not “assume the truth of legal conclusions merely
16 because they are cast in the form of factual allegations.” *Western Mining Council*,
17 643 F.2d at 624. Dismissal is appropriate for “the lack of a cognizable legal
18 theory” or “the absence of sufficient facts alleged under a cognizable legal theory.”
19 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

DISCUSSION

Plaintiffs' Complaint sets forth causes of action as follows: (1) "Negligent Training, Retention, and Supervision;" (2) "Common Law Negligence;" (3) "Violation of Plaintiff's Constitutional Rights Under Color of Law Pursuant to 42 U.S.C. § 1983 (The Civil Rights Act);" (4) "Violation of Plaintiff's Constitutional Rights Pursuant to the Constitution of the United States [sic] and the Washington State Constitution;" (5) "*Monell* Liability;" and (6) "Malicious Prosecution." ECF No. 1 at 10-18. The various causes of action often concern the same protected interests, theories, and many offer mere legal conclusions in support, thus rendering the causes of action difficult to separate and consider individually. To efficiently consider Plaintiffs' claims and Defendants' arguments, the Court construes the various claims as follows:

First, all claims against non-supervisory and individual defendants arising under Section 1983. Plaintiffs' Complaint alleges violations of "rights, privileges, and immunities as guaranteed by the Fourth, Fifth [sic], Eighth [sic] and Fourteenth Amendments to the United States Constitution." ECF No. 1 at 3 ¶ 2.1. Plaintiffs allege that Deputies Gunter and Giacomini, and Officers Carbaugh, Swan, Langan, Flavel, and Newman violated their constitutional rights. ECF No. 1 at 15 ¶ 7.46.

Second, all claims premised upon *Monell* or supervisor liability. Plaintiffs' Complaint alleges that Airway Heights, Chief Richmond, Spokane County, and

1 Sheriff Knezovich “were deliberately indifferent to the substantial risk that its
2 policies were inadequate to prevent violations of law” by employees. ECF No. 1 at
3 16 ¶ 8.48. Plaintiffs’ Complaint alleges that the supervisory defendants’ deliberate
4 indifference resulted in violations to the Fourth and Fifth Amendments. ECF No. 1
5 at 16-17 ¶¶ 8.48, 8.49. Plaintiffs separately state a cause of action for negligent
6 training, retention, and supervision. ECF No. 1 at 10-11. However, the “injury”
7 alleged under that cause of action is nonspecific and premised solely upon
8 violations to Plaintiffs’ constitutional rights. *See, e.g.*, ECF No. 1 at 10-11 ¶ 4.48,
9 4.52. Therefore, the Court construes a *Monell* liability theory against the
10 municipal defendants and a supervisor liability theory against the supervisor
11 defendants for a failure to adopt policies, including negligent training, retention,
12 and supervision.

13 Third, all claims arising under state common, statutory, and constitutional
14 law. Plaintiffs’ Complaint states separate causes of action for negligent training,
15 retention, and supervision, from common law negligence. ECF No. 1 at 10-12.
16 Confusingly and redundantly, the only form of “common law negligence” alleged
17 against the supervisory defendants is negligent training, retention, and supervision.
18 *See* ECF No. 1 at 11-12 ¶ 5.46, 5.47, 5.49. Plaintiffs’ Complaint alleges that the
19 remaining defendants were also negligent. ECF No. 1 at 12 ¶ 5.48. Plaintiffs
20 Complaint further alleges Malicious Prosecution, ECF No. 17-18, ¶ 9.46-9.48, and

1 a violation of the Washington State Constitution, Article 1, Section 7, ECF No. 1 at
2 15 ¶ 7.46.

3 **A. Section 1983 Claims Against Non-Supervisory Individual Defendants**

4 Section 1983 provides, in relevant part:

5 Every person who, under color of any statute, ordinance, regulation,
6 custom, or usage, of any State or Territory or the District of Columbia,
7 subjects, or causes to be subjected, any citizen of the United States or
8 other person within the jurisdiction thereof to the deprivation of any
rights, privileges, or immunities secured by the Constitution and laws,
shall be liable to the party injured in an action at law, suit in equity, or
other proper proceeding for redress

9 “[Section] 1983 is not itself a source of substantive rights, but merely provides a
10 method for vindicating federal rights elsewhere conferred.” *Graham v. Connor*,
11 490 U.S. 386, 393-94 (1989) (internal quotation marks omitted). To state a claim
12 under Section 1983, a plaintiff must show that he was “deprived of a right secured
13 by the Constitution or laws of the United States, and that the alleged deprivation
14 was committed under color of state law.” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526
15 U.S. 40, 49-50 (1999).

16 The Court begins with whether Plaintiffs have sufficiently alleged a
17 violation of a constitutionally protected right. Defendants argue that Plaintiffs’
18 Complaint does not allege facts giving rise to such a violation. ECF No. 7 at 7, 11,
19 17; ECF No. 8 at 9-10.

1 *1. Fifth Amendment² and Eighth Amendment*

2 Plaintiffs offer the Fifth and Eighth Amendments as grounds for Section
3 1983 liability. ECF No. 1 at 3 ¶ 2.1; 10 ¶ 4.46; 11 ¶ 5.46; 13 ¶ 6.49; 15 ¶ 7.46.

4 As the United States Supreme Court recently explained in *Vega v. Tekoh*, a
5 violation of *Miranda* does not, alone, create a violation of the Fifth Amendment
6 upon which a Section 1983 claim may be based. 142 S. Ct. 2095, 2101-02 (2022)
7 (citing *Miranda v. Arizona*, 384 U.S. 436, 439 (1966)). “[A] violation of the
8 constitutional *right* against self-incrimination occurs only if one has been
9 compelled to be a witness against himself in a criminal case.” *Chavez v. Martinez*,
10 538 U.S. 760, 770 (2003) (*italics in original*). Plaintiffs appear to abandon the
11 Fifth Amendment as a basis for Section 1983 liability in their Responses. Indeed,
12 Plaintiffs’ Complaint does not allege that either of them were compelled to testify
13 against themselves, in violation of the Fifth Amendment.

14
15 _____
16 ² It is unclear whether Plaintiffs lodge a Fifth Amendment claim related to the
17 search of their home or Mr. Lobdell’s arrest. Insofar as they do, “[t]he Due
18 Process Clause of the Fifth Amendment and the equal protection component
19 thereof apply only to actions of the federal government—not to those of state or
20 local governments.” *Lee v. City of Los Angeles*, 250 F.3d 668, 687 (9th Cir. 2001).

1 “Eighth Amendment protections apply once a prisoner has been convicted of
2 a crime[.]” *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1246 n.5 (9th Cir. 2016).
3 Plaintiffs’ Complaint alleges that Mr. Lobdell pled guilty to one count of gross
4 misdemeanor harassment, DV, ECF No. 1 at 10 ¶ 3.45, and alleges no injury post-
5 conviction. Again, Plaintiffs have abandoned the Eighth Amendment as a basis for
6 Section 1983 liability in their Responses. Insofar as any Section 1983 claim is
7 premised upon the Fifth or Eighth Amendment, those claims are dismissed.

8 2. *Fourth Amendment Search*

9 Plaintiffs allege that the individual defendants violated their Fourth
10 Amendment rights by warrantlessly searching Plaintiffs’ home. ECF No. 1 at 12-
11 14 ¶¶ 5.47, 5.48, 6.51, 6.53, 6.54. Defendants argue that Ms. Lobdell consented to
12 the search, vitiating the need for a warrant, and, in the alternative, that Defendants
13 did not need anyone’s consent to search the home pursuant to the community
14 caretaking exception. ECF No. 7 at 7; ECF No. 8 at 10-11.

15 “To prevail on a section 1983 claim based on the Fourth Amendment, a
16 plaintiff must show that the state actor’s conduct was an unreasonable search or
17 seizure.” *Sandoval v. Cty. of Sonoma*, 912 F.3d 509, 515 (9th Cir. 2018).

18 “Whether a search is reasonable under the Fourth Amendment requires a case-by-
19 case balancing of the need for the particular search against the invasion of personal
20 rights that the search entails . . . [.]” *Byrd v. Maricopa County Sheriff’s Dep’t*, 629

1 F.3d 1135, 1141 (9th Cir. 2011) (citations and quotations omitted). A court should
2 consider “(1) the scope of the particular intrusion, (2) the manner in which it is
3 conducted, (3) the justification for initiating it, and (4) the place in which it is
4 conducted.” *Id.* A warrantless search of a home is presumptively unreasonable.
5 *Pike v. Hester*, 891 F.3d 1131, 1137 (9th Cir. 2018); *see also Bonivert v. City of*
6 *Clarkston*, 883 F.3d 865, 873 (9th Cir. 2018) (“physical entry of the home is the
7 chief evil against which the wording of the Fourth Amendment is directed.”)
8 (quotations omitted).

9 i. Consent to Search

10 The consent of an occupant renders a search reasonable for Fourth
11 Amendment purposes. *Pike*, 891 F.3d at 1137; *Bonivert*, 883 F.3d at 873.
12 Ordinarily, a present tenant’s objection would make a search unreasonable.
13 *Bonivert*, 883 F.3d at 873. Where a co-tenant who wishes to object is absent, even
14 if the absence is due to lawful detention or arrest, the consent of a present co-tenant
15 is still renders a search reasonable. *Fernandez v. California*, 571 U.S. 292, 303
16 (2014). Consent must be freely and voluntarily given, and to determine whether
17 consent to search was given, the Court must consider the “totality of the
18 circumstances.” *Pavao v. Pagay*, 307 F.3d 915, 919 (9th Cir. 2002).

19 The residence at issue belonged to both Mr. and Ms. Lobdell, ECF No. 1 at 4

20 ¶ 3.1. Plaintiffs’ Complaint alleges that Ms. Lobdell was outside of the home

1 during the initial search and was allowed to enter after an initial protective sweep.
2 ECF No. 1 at 6 ¶ 3.14. Officer Carbaugh’s body camera footage shows
3 Ms. Lobdell outside of the home prior to the police entering. ECF No. 11, Ex. A,
4 at 3:03. The body camera footage does not show Ms. Lobdell giving explicit
5 consent to search her home. However, she first appears in the video already
6 speaking to a police officer, she tells Officer Carbaugh the layout of her home,
7 how many children are inside, that there is a back door, that Mr. Lobdell has a
8 handgun, and she gives the officers Mr. Lobdell’s phone number, ECF No. 11, Ex.
9 A, at 3:05-4:18. Ms. Lobdell explains that she was the one who called the police.
10 ECF No. 11, Ex. A, at 12:55-13:05, 1:01:30-1:01:40.

11 Later on, according to Plaintiffs’ Complaint, Ms. Lobdell “escorted” Officer
12 Carbaugh to the bedroom to show him the last place she saw the gun case. ECF
13 No. 1 at 7 ¶ 3.28. In the body camera footage, after Mr. Lobdell is placed in the
14 patrol car, Ms. Lobdell is inside her home with police officers as they search for a
15 gun. ECF No. 11, Ex. A, at 10:45-10:55. Officer Carbaugh asks Ms. Lobdell to
16 show him where she saw Mr. Lobdell with a gun, and she leads him into a
17 bedroom and points out where she last saw a gun case. ECF No. 11, Ex. A, at
18 13:05-13:30.

19 As a resident co-tenant, Ms. Lobdell had full authority to consent to a search
20 of her home, irrespective of Mr. Lobdell’s objection. *See Georgia v. Randolph,*

1 547 U.S. 103, 118 (2006) (“it would be silly to suggest that the police would
2 commit a tort by entering . . . to determine whether violence (or threat of violence)
3 has just occurred or is about to (or soon will) occur, however much a spouse or
4 other co-tenant objected.”); *Fernandez*, 571 U.S. at 307 (“an occupant may want
5 the police to conduct a thorough search so that any dangerous contraband can be
6 found and removed. In this case, for example, the search resulted in the discovery
7 and removal of a sawed-off shotgun to which Rojas’ 4-year-old son had access.”).

8 Plaintiffs do not argue that Ms. Lobdell did not give consent, instead, they
9 argue that they were not given warnings under *State v. Ferrier*, 960 P.2d 927, 934
10 (Wash. 1998) (en banc), prior to the search of their home, and any consent given
11 was invalid as a result. ECF No. 9 at 5-6; ECF No. 10 at 8-9. *Ferrier* is a
12 Washington Supreme Court case concerning the Washington Constitution, which
13 “goes further than the Fourth Amendment in protecting against warrantless
14 searches.” *Ferrier*, 960 P.2d at 931. “[I]t is not the province of the Fourth
15 Amendment to enforce state law.” *Virginia v. Moore*, 553 U.S. 164, 178 (2009).
16 “[E]ven if state law was violated, [Defendant’s] consent is judged solely under
17 federal law.” *United States v. Cormier*, 220 F.3d 1103, 1111 (9th Cir. 2000).
18 Even if Officer Carbaugh needed to give *Ferrier* warnings to Ms. Lobdell under
19 state law, as much does not give rise to a violation of the Fourth Amendment.

1 Presuming all facts alleged as true and drawing all reasonable inferences in
2 Plaintiffs' favor, Plaintiffs' claim that the search violated the Fourth Amendment
3 fails to meet the facial plausibility requirement articulated in *Iqbal*. 556 U.S. at
4 678-79. "A claim has facial plausibility when the plaintiff pleads factual content
5 that allows the court to draw the reasonable inference that the defendant is liable
6 for the misconduct alleged." *Iqbal*, 556 U.S. at 678. "The plausibility standard . . .
7 asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.*

8 To find that the Fourth Amendment was violated, the Court must infer from
9 the facts presented that Ms. Lobdell did not consent to the search of her home.
10 Notably, Plaintiffs do not urge the Court to make such an inference, and instead
11 argue that any consent offered was invalid. ECF No. 9 at 5-7; ECF No. 10 at 8-10.
12 The inference would not be reasonable. The facts as alleged "do not permit the
13 court to infer more than the mere possibility of misconduct" and therefore
14 Plaintiffs' Fourth Amendment claims fail.

15 Plaintiffs' Fourth Amendment claims may be dismissed for this reason,
16 alone. However, the Court continues to offer an additional basis for dismissal.

17 ii. Community Caretaking Exception

18 There is an exception to the Fourth Amendment's warrant requirement
19 where "the exigencies of the situation make the needs of law enforcement so
20 compelling that the warrantless search is objectively reasonable under the Fourth

1 Amendment.” *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (quotations
2 omitted). An entry pursuant to the emergency aid exception is reasonable where
3 the circumstances, viewed objectively, justify the action. *Bonivert*, 883 F.3d at
4 876-77. The two-part test for whether a warrantless search was reasonable under
5 the emergency doctrine asks (1) under the totality of the circumstances, whether
6 “law enforcement had an objectively reasonable basis for concluding that there was
7 an immediate need to protect others or themselves from serious harm; and (2) the
8 search’s scope and manner were reasonable to meet the end.” *U.S. v. Snipe*, 515
9 F.3d 947, 952 (9th Cir. 2008).

10 According to Plaintiffs’ Complaint, when law enforcement arrived at the
11 Lobdell home, they were responding to a domestic dispute where a gun was
12 displayed. ECF No. 1 at 4 ¶¶ 3.1-3.2. Even after the suspect, Mr. Lobdell, was
13 removed from the home, the location of the gun was unknown, ECF No. 1 at 6 ¶
14 3.13, and both Ms. Lobdell and her daughter reported hearing Mr. Lobdell cock the
15 gun. ECF No. 1 at 7-8 ¶¶ 3.22, 3.32. In the body camera footage, Ms. Lobdell’s
16 son tells Officer Carbaugh that he saw Mr. Lobdell following his mother with a
17 gun, and that he saw the box that the gun was in. ECF No. 11, Ex. A, at 28:10-
18 28:45. Ms. Lobdell tells Officer Carbaugh that she does not know where the gun is
19 currently located or how many guns Mr. Lobdell owns. ECF No. 11, Ex. A, at
20 29:00-29:15.

1 Plaintiffs argue that the body camera footage “clearly shows a pretextual
2 intent to conduct a warrantless search” and that “the officers were actively
3 conspiring to create justifications for a warrantless search.” ECF No. 10 at 12.
4 The subjective motivation of the officers conducting the search is irrelevant for the
5 instant analysis. *Snipe*, 515 F.3d at 951. The Court considers “the totality of the
6 circumstances” to determine whether there was an objectively reasonable basis for
7 the search. *Id.* at 951-52.³

8 Plaintiffs argue that, once Mr. Lobdell was placed in the patrol car, there
9 was no further risk of injury justifying a search under the community caretaking
10 exception. ECF No. 10 at 14-15. The Court disagrees. Considering the facts as
11 alleged, Ms. Lobdell, her daughter, and her son each confirmed that there was a
12 gun in the home and that its location was unknown. ECF No. 11, Ex. A, at 28:10-
13 28:45. The risk that the young children may find a loaded gun was an “objectively
14 reasonable basis for concluding there was an immediate need to protect others . . .
15 from serious harm.” *Snipe*, 515 F.3d at 952.

16
17 ³ The Court pauses to note that, contrary to Plaintiffs’ argument, in the body
18 camera footage, the police officers verbally explain that their search for the gun is
19 motivated by the need to secure it before leaving, as there are children in the home.
20 *See, e.g.*, ECF No. 11, Ex. A, at 25:20-26:55; 48:00-48:45; 55:00-55:55.

1 Additionally, the “scope and manner” of the search “were reasonable to
2 meet the need.” *Id.* In the body camera footage, the officers are seen searching
3 through the entirety of the Lobdell home. *See, e.g.*, ECF No. 11, Ex. A, at 30:40-
4 34:10; 45:30-47:25. As recounted by Ms. Lobdell, Mr. Lobdell had followed her
5 throughout the house, and after she left, he was alone inside until the police
6 arrived. ECF No. 11, Ex. A, at 11:00-12:55. The need of the search was to locate
7 a gun that could be anywhere in the house, therefore, the scope of the search was
8 reasonable.

9 3. *Fourth Amendment Arrest*

10 Plaintiffs argue that the police officers violated Mr. Lobdell’s Fourth
11 Amendment rights to be free from arrest without probable cause. ECF No. 1 at 13
12 ¶¶ 6.49, 6.50. Plaintiffs argue that “Defendants, acting under the color of state law,
13 deprived [Mr. Lobdell] of his rights to be free from unreasonable seizure in
14 violation of the Fourth and Fourteenth Amendment[.]” ECF No. 1 at 16 ¶ 8.46.

15 “A claim for unlawful arrest is cognizable under § 1983 as a violation of the
16 Fourth Amendment, provided the arrest was without probable cause or other
17 justification.” *Dubner v. City & County of San Francisco*, 266 F.3d 959, 965 (9th
18 Cir. 2001). “The test for whether probable cause exists is whether at the moment
19 of arrest the facts and circumstances within the knowledge of the arresting officers
20 and of which they had reasonably trustworthy information were sufficient to

1 warrant a prudent person in believing that the petitioner had committed or was
2 committing an offense.” *Blankenhorn v. City of Orange*, 485 F.3d 463, 471 (9th
3 Cir. 2007) (alterations and quotations omitted). “Probable cause exists when,
4 under the totality of the circumstances known to the arresting officers (or within
5 the knowledge of the other officers at the scene), a prudent person would believe
6 the suspect had committed a crime.” *Id.* at 471 (citing *Dubner*, 266 F.3d at 965).

7 The facts as alleged in Plaintiffs’ Complaint, and the body camera footage
8 incorporated, demonstrate that law enforcement had probable cause to arrest
9 Mr. Lobdell. Ms. Lobdell recounted the story leading up to her calling the police
10 to Officer Carbaugh. As alleged in Plaintiffs’ Complaint, when Ms. Lobdell got
11 home from work, Mr. Lobdell was intoxicated and confronted her, he followed her
12 around and threatened her, when she went into the children’s bedroom to escape
13 him, he entered, grabbed her wrists, and continued to threaten her. ECF No. 1 at 6-
14 7 ¶ 3.16-3.27. Further, Ms. Lobdell and her two children indicated that
15 Mr. Lobdell had followed Ms. Lobdell around with a gun in his hand. *See, e.g.*,
16 ECF No. 1 at 7 ¶ 3.27; ECF No. 11, Ex. A, at 28:10-28:45. These circumstances
17 would lead a prudent person to conclude that Mr. Lobdell had committed, at the
18 very least, the crime of domestic violence harassment. *See generally* RCW
19 9A.46.020, 10.99.020, 10.99.080. Plaintiffs’ Complaint fails to plead sufficient
20

1 facts to support their claim that law enforcement lacked probable cause to arrest
2 Mr. Lobdell in violation of the Fourth Amendment.

3 *4. Fourteenth Amendment Due Process*

4 Plaintiffs claim in their Complaint that Mr. Lobdell was arrested and
5 charged without cause, “partially due the illegal interrogation, warrantless search
6 and seizure performed by law enforcement officers.” ECF No. 1 at 14 ¶ 6.50.
7 Plaintiffs argue that a “conspiracy and manufacturing of justifications” occurred
8 that “clearly deprive[d] Mr. Lobdell of his 14th Amendment Due Process rights.”
9 ECF No. 10 at 12.

10 “The Fourteenth Amendment’s Due Process Clause protects individuals
11 against deprivations of liberty without due process of law.” *Reed v. Baca*, 800 F.
12 Supp. 1102, 1109 (C.D. Cal. 2011). Plaintiffs do not distinguish any claim under
13 the Fourteenth Amendment apart from their claims made under the Fourth
14 Amendment. As the Ninth Circuit found in *Fontana v. Haskin*, “[Plaintiffs’]
15 claim, although a possible fit under the Fourteenth Amendment, is better seen as a
16 Fourth Amendment claim because [he] had been seized by the police.” 262 F.3d
17 871, 881 (9th Cir. 2001) (citing *Reed v. Hoy*, 909 F.2d 324, 329 (9th Cir. 1990)).
18 Any Fourteenth Amendment claim would be redundant of Plaintiffs’ Fourth
19 Amendment claim, and would otherwise fail on the same grounds as discussed
20 above.

1 In sum, the factual allegations as to the conduct of the individual defendants
2 do not amount to a violation of any constitutional right. Plaintiffs' Complaint fails
3 to state a claim for relief upon which relief can be granted that is plausible on its
4 face against the individual defendants. *Iqbal*, 556 U.S. at 678.

5 **B. Section 1983 Claims Against Municipal and Supervisory Defendants**

6 Plaintiffs' Complaint alleges that the supervisory defendants "were
7 deliberately indifferent to the substantial risk that its policies were inadequate to
8 prevent violations of law" by employees. ECF No. 1 at 16 ¶ 8.48. Plaintiffs'
9 Complaint attempts to establish a *Monell* claim against Airway Heights and
10 Spokane County, and supervisory liability against Sheriff Knezovich and Chief
11 Richmond. ECF No. 1 at 15-16 ¶¶ 8.46-8.52.

12 Municipalities face Section 1983 liability "for constitutional violations
13 resulting from official county policy or custom." *Benavidez v. Cty. of San Diego*,
14 993 F.3d 1134, 1153 (9th Cir. 2021). A supervisor's liability must be premised
15 upon "(1) his or her personal involvement in the constitutional deprivation, or (2) a
16 sufficient causal connection between the supervisor's wrongful conduct and the
17 constitutional violation." *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011).

18 Each theory requires a demonstration that the plaintiff suffered constitutional
19 injury. As explained above in relation to the individual defendants, Plaintiffs'
20 Complaint fails to set forth factual allegations amounting to a violation of any

1 constitutional right. Plaintiffs' claims related to *Monell* or supervisor liability are
2 dismissed.

3 **C. State Law Claims**

4 *1. Negligent Training, Retention, and Supervision*

5 Plaintiff's Complaint sets forth a cause of action for "Negligent Training,
6 Retention, and Supervision" against the supervisory defendants. ECF No. 1 at 10-
7 11. Claims for negligent hiring, retention, training, and supervision "arise when
8 the employee is acting outside the scope of employment." *Evans v. Tacoma*
9 *School District No. 10*, 380 P.3d 553, 564 (Wash. Ct. App. 2016) (citing *Neice v.*
10 *Elmview Group Home*, 929 P.2d 420, 425-26 (Wash. 1997)); *see also Hicks v.*
11 *Klickitat County Sheriff's Office*, 515 P.3d 556, 563 (Wash. Ct. App. 2022).
12 Plaintiffs' Complaint contains no allegation that any employee of the supervisory
13 defendants acted outside the course and scope of employment during the events in
14 question. *See Evans*, 380 P.3d at 563-64. Plaintiffs' Complaint fails to state a
15 claim for negligent retention, training, or supervision.

16 *2. Common Law Negligence*

17 Plaintiff's Complaint separately states a cause of action for Common Law
18 Negligence, ECF No. 1 at 11-13, but, confusingly, the sole basis for common law
19 negligence alleged against the supervisory defendants is their failure to train their
20 employees. ECF No. 1 at 11-12 ¶ 5.46; 12 ¶¶ 5.47, 5.49. The duplicative claims

1 are dismissed. *See M.M. v. Lafayette School Dist.*, 681 F.3d 1082, 1091 (9th Cir.
2 2012) (citation omitted). Plaintiffs pursue negligence against the individual
3 defendants as well.

4 The elements of a common law negligence claim are: “(1) the existence of a
5 duty owed to the complaining party; (2) a breach of that duty; (3) a resulting
6 injury; and (4) that the claimed breach was the proximate cause of the injury.”

7 *Jackson v. City of Seattle*, 244 P.3d 425, 428 (Wash. App. Ct. 2010). “As a
8 general rule, law enforcement activities are not reachable in negligence.” *Keates v.*
9 *City of Vancouver*, 869 P.2d 88, 93 (Wash. Ct. App. 1994) (collecting cases).

10 Governments are not reachable in tort if the duty breached was owed to the public,
11 and not to an individual. *Beltran-Serrano v. City of Tacoma*, 442 P.3d 608, 614
12 (Wash. 2019) (en banc). This principle is also known as the public duty doctrine.
13 *Cummins v. Lewis County*, 133 P.3d 458, 461 (Wash. 2006) (en banc).

14 The duty to obtain a search warrant under the Fourth Amendment is “not a
15 duty shared with private persons.” *Munich v. Skagit Emergency Commc’n Ctr.*,
16 288 P.3d 328, 337 (Wash. 2012) (Chambers, J., concurring) (internal citations
17 omitted). Plaintiffs concede that the public duty doctrine applies, but argues that
18 the “failure to enforce” exception applies. ECF No. 10 at 7.

19 The failure to enforce exception requires a plaintiff to demonstrate that
20 “governmental agents responsible for enforcing statutory requirements possess[ed]

1 actual knowledge of a statutory violation,” that the agents “fail[ed] to take
2 corrective action despite a statutory duty to do so,” and that “the plaintiff [was]
3 within the class the statute intended to protect.” *Ehrhart v. King County*, 460 P.3d
4 612, 620 (Wash. 2020). The exception is to be “narrowly construed” and applies
5 only where the relevant statute “mandates a specific action to correct a violation.”
6 *Pierce v. Yakima County*, 251 P.3d 270, 274 (Wash. App. Ct. 2011).

7 Plaintiff cites to RCW 10.79.040, which provides as follows:

8 (1) It shall be unlawful for any police officer or other peace officer to
9 enter and search any private dwelling house or place of residence
10 without the authority of a search warrant issued upon a complaint as by
11 law provided.

12 (2) Any police officer or other peace officer violating the provisions of
13 this section is guilty of a gross misdemeanor.

14 The failure to enforce exception requires that the relevant statute, in certain terms,
15 impose a duty on the government in response to a violation. *Pierce*, 251 P.3d at
16 274. Examples of statutes supporting the exception offered in *Pierce* include a city
17 ordinance directing the electrical inspector to sever nonconforming lighting
18 systems discovered during inspection, and a statute directing police officers to take
19 intoxicated persons who have threatened harm into custody. 251 P.3d at 274. In
20 another case, a code provision requiring animal control to discern whether a
particular dog is dangerous after a citizen report gave rise to the exception.
Gorman v. Pierce County, 307 P.3d 795, 803 (Wash. Ct. App. 2013). Statutes

1 giving rise to the exception must be clear, statutes that invoke discretion on the part
2 of an official do not suffice. *Pierce*, 251 P.3d at 274-75.

3 Plaintiffs rely upon a statute that deems certain behavior criminal. The
4 statute does not impose an affirmative duty on the government to respond to a
5 statutory violation. Assuming for the sake of argument that Plaintiffs have
6 successfully alleged a violation of RCW 10.79.040, that statute does not “mandate
7 a specific action when the [statute] is violated.” *Gorman*, 307 P.3d at 802.
8 Plaintiffs have failed to state a claim for common law negligence due to the public
9 duty doctrine, and have failed to identify an applicable exception to the doctrine.

10 3. *Washington State Constitution*

11 Plaintiffs allege that “Defendants acted with reckless and callous
12 indifference to [Plaintiffs’] rights and failed to prevent injury to [Curtis Lobdell],
13 [in] violation of his rights pursuant to Article 1, Section 7 of the Washington State
14 Constitution[.]” ECF No. 1 at 15 ¶ 7.46. Under Washington State law, absent
15 express statutory authority, a person cannot seek damages for alleged violations of
16 the Washington constitution. *Blinka v. Wash. State Bar Ass’n*, 36 P.3d 1094, 1102
17 (Wash. Ct. App. 2001). Article 1, § 7 of the Washington State Constitution
18 provides, in its entirety, that “[n]o person shall be disturbed in his private affairs, or
19 his home invaded, without authority of law.” “Washington law contains no
20 counterpart to 42 U.S.C. § 1983 Washington courts have consistently rejected

1 invitations to establish a cause of action for damages based upon constitutional
2 violations . . . [and] refused to recognize a cause of action for a constitutional
3 violation when plaintiffs may obtain adequate relief under the common law.”

4 *Peltier v. Sacks*, 328 F. Supp. 3d 1170, 1184-85 (W.D. Wash. 2018). Plaintiffs
5 have failed to state a claim for relief under the Washington State Constitution.

6 *4. Malicious Prosecution*

7 Plaintiffs’ Complaint alleges that Curtis and Danielle Lobdell “have been
8 subjected to criminal prosecution by” Spokane County, Sheriff Knezovich, the
9 Airway Heights, and Chief Richmond. ECF No. 1 at 17 ¶ 9.46. Plaintiffs’
10 Complaint accuses Airway Heights, Spokane County, Deputies Giacomini and
11 Gunter, and Officers Carbaugh, Swan, Flaval, Langan, and Newman of
12 “conspir[ing] to prosecute [Curtis Lobdell] for crimes that were not properly
13 investigated leading to the Plaintiff [being] charged for these crimes in violation of
14 his Constitutional Rights.” ECF No. 1 at 18 ¶ 9.47.

15 When a malicious prosecution claim is centered on a wrongful criminal
16 prosecution, the plaintiff must establish five elements:

- 17 (1) that the prosecution claimed to have been malicious was instituted
or continued by the defendant;
18 (2) that there was want of probable cause for the institution or
continuation of the prosecution;
19 (3) that the proceedings were instituted or continued through malice;
20 (4) that the proceedings terminated on the merits in favor of the
plaintiff, or were abandoned; and

1 (5) that the plaintiff suffered injury or damage as a result of the
2 prosecution.

3 *Clark v. Baines*, 84 P.3d 245, 911 (Wash. 2004). Plaintiffs' Complaint fails to
4 allege that Ms. Lobdell was ever charged with a crime. Plaintiffs' Complaint
5 alleges that Mr. Lobdell was charged "with assault 2nd degree with a deadly firearm
6 and unlawful possession of a firearm 1st degree[,]" and ultimately all were
7 dismissed aside from "one count of gross misdemeanor harassment, DV[,]" to
8 which Mr. Lobdell pled guilty. ECF No. 1 at 10 ¶¶ 3.44, 3.45.

9 Probable cause is a complete defense to malicious prosecution. *Rodriguez v.*
10 *City of Moses Length*, 243 P.3d 552, 555 (Wash. Ct. App. 2010). As explained
11 above, Mr. Lobdell's arrest was supported by probable cause. *See supra* section
12 A.3. Plaintiffs' Complaint fails to state a claim for malicious prosecution.

13 **D. Leave to Amend**

14 Plaintiffs do not seek leave to amend their Complaint, but the Court
15 considers whether such leave is appropriate. A district court need not grant leave
16 to amend where amendment would be futile. *Rainero v. Archon Corp.*, 844 F.3d
17 832, 840-41 (9th Cir. 2016) (citing *Foman v. David*, 371 U.S. 178, 182 (1962)).
18 Plaintiffs' factual allegations are legally insufficient to support their causes of
19 action. With the benefit of body camera footage incorporated into the Plaintiffs'
20 Complaint, the Court may readily conclude that no amendment would cure the
deficiencies in the Complaint. Indeed, "[a] party cannot amend pleadings to

1 contradict an earlier assertion made in the same proceeding.” *Airs Aromatics, LLC*
2 *v. Victoria’s Secret Stores Brand Mgmt.*, 744 F.3d 595, 600 (9th Cir. 2014). No set
3 of factual allegations consistent with those already made in this proceeding would
4 support any of the causes of action that Plaintiffs pursue.

5 **CONCLUSION**

6 For the reasons stated above, Plaintiffs’ Complaint fails to state a claim for
7 relief that is facially plausible under Section 1983 or state law. Plaintiffs’
8 Complaint is dismissed with prejudice and without leave to amend.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. The Airway Heights Defendants’ Motion to Dismiss, **ECF No. 7**, is
11 **GRANTED.** The Spokane County Defendants’ Motion to Dismiss, **ECF No. 8**, is
12 **GRANTED.**

13 2. Plaintiffs’ Complaint, **ECF No. 1**, is **DISMISSED with prejudice**,
14 and without leave to amend.

15 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
16 Order and provide copies to the parties and **CLOSE** the file.

17 DATED March 16, 2023.

18 s/Mary K. Dimke
19 MARY K. DIMKE
20 UNITED STATES DISTRICT JUDGE